

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES OF AMERICA,

v.

JONATHAN ZAMPIERI

Case No. 2:15-cr-174-2

OPINION AND ORDER
ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
DENYING § 2255 PETITION, DENYING MOTION TO APPOINT COUNSEL,
AND DENYING A CERTIFICATE OF APPEALABILITY
(Docs. 391, 395, & 403)

This matter came before the court for a review of the Magistrate Judge's October 21, 2024 Report and Recommendation ("R & R") (Doc. 403), in which the Magistrate Judge recommended that the court deny self-represented Defendant Jonathan Zampieri's 28 U.S.C. § 2255 petition in which he sought a reduction of his below-Sentencing Guidelines sentence of 230 months imprisonment, based on his claim that his criminal history score included a now-expunged 2008 conviction for possession of marijuana. Defendant contended that including this conviction, which results in a Criminal History Category of VI instead of V, created a "fundamental defect which inherently results in a complete miscarriage of justice." *United States v. Addonizio*, 442 U.S. 178, 185 (1979) (internal quotation marks omitted). The government opposed the motion and argued that there was no miscarriage of justice because excluding the marijuana conviction from Defendant's criminal history score did not change his Guidelines range, and because the court's 230-month sentence was below the low end of the Guidelines range of 360 months to life.

The Magistrate Judge also recommended the court deny Defendant's motion for appointment of counsel. (Doc. 395.) No party has filed an objection to the R & R, and the time period to do so has expired.

Defendant is self-represented. The government is represented by Assistant United States Attorneys Paul J. Van de Graaf and Gregory L. Waples.

A district judge must make a de novo determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

In his ten-page R & R, the Magistrate Judge carefully reviewed the factual allegations, procedural history, and requests for relief set forth in Defendant's § 2255 petition and correctly recommended denial because Defendant failed to demonstrate that there was a fundamental defect in his sentence which resulted in a complete miscarriage of justice.


CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 403) as the court's Opinion and Order and DENIES Defendant's § 2255 petition (Doc. 391) and his motion for appointment of counsel (Doc. 395).

Pursuant to Fed. R. App. P. 22(b)(1) and 28 U.S.C. § 2253(c)(2), the court DENIES Defendant a certificate of appealability in this matter because Defendant has failed to make a substantial showing of the denial of a constitutional right.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 21st day of November, 2024.


 Christina Reiss, Chief Judge
 United States District Court